IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SECOND DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION No.12367 of 2004

Between:

M/s Sri Rajyalakshmi Enterprises,

18-1-43, Bhavari Setty Vari Street,
Sattenapalli, Guntur District

rep.by its Proprietor Ch.Sambasiva Rao **..... PETITIONER**

AND

The Commercial Tax Officer,

Sattenapalli, Guntur District **.....RESPONDENT**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Certiorari or any other appropriate Writ, Order or direction calling for the records of the Respondent i.e. show cause notice dated 28-6-2004 in O.R.No.18/2004-05 and quash the same as arbitrary, illegal, contrary to Section 28(6) of the Act and Rule 48(1) of the Andhra Pradesh General Sales Tax Rules and against the weight of evidence and probabilities of the Petitioner's case and also in violation of principles of natural justice and consequently direct the respondent herein to release the goods forthwith proposed to confiscate vide show cause notice dated 28-06-2004 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.

Counsel for the Petitioner: MR.M.V.PAVAN KUMAR

Counsel for the Respondent: Mr.K.Raji Reddy, Spl. Standing Counsel for Commercial Taxes Department.

The Court at the admission stage made the following :

-

-

-

-

ORDER: (PER BN, J)

By this writ petition, a show cause notice dated 28-06-2004 has been challenged on the ground that the show cause notice has not been issued after complying with the requirement of law as laid down by Section 28(6) of the A.P.General Sales Tax Act (hereinafter referred to as 'the Act') and Rule 48(1) of the Andhra Pradesh General Sales Tax Rules (hereinafter referred to as 'the Rules').

We have gone through the show cause notice and counter-affidavit and have heard the learned Counsel for the parties.

Proviso to Section 28(6) lays down that before an order of confiscation is passed, a right of hearing should be given to the dealer. That is exactly what the Department has tried to do by issuing the show cause notice and therefore, we do not find any contravention of proviso to Section 28 (6) of the Act.

Rule 48(1) of the Rules lays down:

> "If any officer authorized under Section 28 of the Act, finds any goods in any office, shop, godown, vehicle, vessel or any other place of business or any other building or place of a dealer which have not been accounted for in his accounts, registers, or other documents maintained in the course of his business, the officer may, for reasons to be recorded in writing, seize such goods. The order shall specify the description, the quantity and the value of the goods seized. A copy of it shall be served on the dealer or persons in charge of the goods."

By going through the order and counter-affidavit, it is abundantly clear that the safeguards provided under Rule 48 have been adhered to, by the Department. We find no merit in the writ petition, which is accordingly dismissed. However, in the

interest of justice, the petitioner is given two weeks time from today, to submit his reply to the show cause notice. No costs.

(Bilal Nazki, J)

2nd August, 2004

(S.Ananda Reddy, J)

LUR

To

1.The Commercial Tax Officer,

Sattenapalli, Guntur District

2.Two CD copies